

Chain of Custody

(b) (6)

Relinquished By: (Signature) _____ Date: 2017-07-24 Time: _____

Date Shipped: 2017-07-24 Carrier: (Attach Record) delivered 7-21

Received By: (Signature) _____ Date: 2017-07-24 Time: _____

Shipping Receipt:

Sample Pictures



RECEIVED

OCT 01 2017

South Dakota Department of Agriculture
Division of Agricultural Services
Foss Building, 523 East Capitol
Pierre, SD 57501-3182

Sample Collection Report

The following sample was collected and receipt is hereby acknowledged pursuant to state and federal law.

Product Category: Pesticide				
Sample Number: 05-JL-18		Date: 2017-07-18		Product/Material Sampled: Leaf material trees, grass, clover, garden.
Lot or Invoice# 5	Date Shipped 2017-07-21	# of Containers Sampled 1	Size of Containers qrt.	Amount on Hand
Owner/Dealer (Name and Complete Address) (b) (6)			Manufacturer/Registrant (Name and Complete Address)	
Sample Collected and Prepared in the Following Manner: Sampled per manual into a clean glass jar with a teflon lid, placed in an inverted plastic bag and sealed with an official seal. Stored in refrigeration or cooler with ice pack during transport.				
Sample Collection Location Address listed above.		Collection Location Description (b) (6)		Latitude (b) (6)
EPA Reg. # (pesticide only): Brigade, 279-3313.		EPA Est. # (pesticide only):		
Analysis Requested (Listed % guarantee if label not attached):				
Feed/Animal Remedy:		Fertilizer/Soil Amendment:		Pesticide: (List guarantee/analysis requested) Trivapro, 100-1613.
Possible Drug Analysis: (Amprolium, Arsanilic Acid, Carbadox, Chlortetracycline, Decoquinat, Dichlorvos, Lasalocid, Monesin, Oxytetracycline, Piperazine, Pyrantel Tartrate / Pamoate, Sulfa-methazine/methox ine/thiazole, Tetracycline Hydrochloride, Tylosin)				
Comments: Test sample for pesticide residue of the two pesticides listed above.				
The undersigned acknowledges that the sample shown above as obtained from products or devices that were packaged, labeled, and released for shipment or sale, or held for use, received under the supplier or carrier date provided above or that samples were taken from property or product under their control.				
Signature (b) (6) (Owner, Operator or Agent)		Title land owner (Owner, Operator or Agent)		
Signature (Inspector/Investigator)				
Lab Remarks:				

OCT 01 2017

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Chain of Custody

(b) (6)

Relinquished By: (Signature) _____ Date: 2017-07-24 Time: _____

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Received By: (Signature) _____ Date: 2017-07-24 Time: _____

Shipping Receipt:

Sample Pictures



RECEIVED

OCT 01 2017

U.S. Environmental Protection Agency
Washington, D.C. 20460

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South Dakota Department of Agriculture
Division of Agricultural Services
Foss Building, 523 East Capitol
Pierre, SD 57501-3182

Sample Collection Report

The following sample was collected and receipt is hereby acknowledged pursuant to state and federal law.

Product Category: Pesticide Residue				
Sample Number: 08-JL-18		Date: 2017-07-19		Product/Material Sampled: Dead honey bees.
Lot or Invoice# 8		Date Shipped 2017-07-21	# of Containers Sampled 1	Size of Containers part of qt.
Owner/Dealer (Name and Complete Address) Angela Jackson 46516 316th St. Vermillion SD 57069			Manufacturer/Registrant (Name and Complete Address)	
Sample Collected and Prepared in the Following Manner: Sample collected per manual into a clean glass jar with a teflon lid, placed in an inverted plastic bag and sealed with an official seal. Stored in refrigeration or cooler with ice pack during transport.				
Sample Collection Location Address listed above.		Collection Location Description	Latitude (b) (6)	Longitude (b) (6)
EPA Reg. # (pesticide only): Brigade, 279-3313		EPA Est. # (pesticide only):		
Analysis Requested (Listed % guarantee if label not attached):				
Feed/Animal Remedy:		Fertilizer/Soil Amendment:		Pesticide: (List guarantee/analysis requested) Trivapro, 100-1613.
Possible Drug Analysis: (Amprolium, Arsanilic Acid, Carbadox, Ch lortetracycline, Decoquinat, Dichlorvos, Lasalocid, Monesin, Oxytetracycline, Piperazine, Pyrantel Tartrate / Pamoate, Sulfa-methazine/methox ine/thiazole, Tetracycline Hydrochloride, Tylosin)				
Comments: Test sample for residue of the two pesticides listed above.				
The undersigned acknowledges that the sample shown above as obtained from products or devices that were packaged, labeled, and released for shipment or sale, or held for use, received under the supplier or carrier date provided above or that samples were taken from property or product under their control.				
Signature _____ (Owner, Operator or Agent)		Title _____ Land owner (Owner, Operator or Agent)		
Signature _____ (Inspector/Investigator)				
Lab Remarks:				

OCT 01 2017

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Chain of Custody

(b) (6)

Relinquished By: (Signature) _____

Date: 2017-07-24

Time: _____

Date Shipped: 2017-07-24

Carrier: (Attach Record)

delivered 7-21

Received By: (Signature) _____

Date: 2017-07-24

Time: _____

Shipping Receipt: _____

Sample Pictures



OCT 01 2017

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Farley, Joseph

From: (b) (6)
Sent: Wednesday, October 18, 2017 9:14 PM
To: Farley, Joseph
Subject: Fwd: [EXT] Overspray issue - Notice of noncompliance
Attachments: Jackson - NONC.pdf

Hello J.D.,

Please add this email to my file and read it carefully, especially the official attachment. This is extremely serious for me. I talked to Regina at the lab today and she assured me with 99.999% accuracy that there were no mix-ups on my lab results. My green shirt did test that high in Acetochlor. She personally said that was high. Herbicides were sprayed at incorrect amounts on (b) (6) farm and this was not reported to your agency as my organic inspector stated in his report from the visual damage. *I have a documentary video I am producing with the video footage and photos that I am going to be sharing with the FAA and your office next week.*

I know you are waiting on Jeff's samples to come back, but I am proceeding with litigation. I have an appointment with my attorney and I am sure they will be in contact with your office soon.

You should compare our state's aerial pesticide applicator licensing process to our neighboring states. I pray my case is reason enough to get some things changed. Regardless of your test results, the damage has been done to me and my farm and my business.

(b) (6)

----- Forwarded message -----

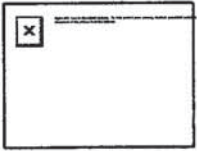
From: Steve Walker <spwalker@mosaorganic.org>
Date: Wed, Oct 18, 2017 at 7:29 PM
Subject: Overspray issue - Notice of noncompliance
To: Erik Gundersen <egundersen@mosaorganic.org>, (b) (6)

Hi Erik, and (b) (6) -

I have checked the residue test results and Erik's review work for the overspray situation. This affirms that the residue test results show an organic concern - for propiconazole and for metribuzin. As such, we are sending the attached Notice of Noncompliance. This will also be send by priority mail, tomorrow. I have not taken this straight to proposed suspension of certification, because the incident seemed to be out of the control of our organic operator, and, although affected land must be removed from certification, that can be voluntary, and systemic corrections which adequately address the concern going forward may be possible.

Additionally, my additional review affirms that one propiconazole test result indicates an EPA tolerance violation. We will be reporting that violation, tomorrow.

Stephen Walker
Operations Manager
MOSA Certified Organic
PO Box 821 Viroqua, WI 54665
608.637.2526
mosaorganic.org



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P.O. Box 821 , 122 W. Jefferson Street , Viroqua , Wisconsin 54665
mosa@mosaorganic.org ■ 608.637.2526 | phone ■ 608.637.7032 | fax

(b) (6)

Notice of Noncompliance

(b) (6)

Dear (b) (6)

10/18/2017

This letter is an official Notice of Noncompliance according to section 205.662(a) of the USDA National Organic Program regulations. This noncompliance is related to an aerial over-spray event which occurred on 7/13/2017. Details are below.

Please reference National Organic Standards §205.671 Exclusion from organic sale, and §205.202 Land requirements. On 7/13/2017 you contacted the MOSA office to inform us that your farm had experienced significant aerial over-spray from a plane spraying the farm that adjoins your farm across the road to the south. The National Organic Standards require such notification, as described at section 205.400(f).

The South Dakota State Department of Ag visited your farm shortly after the over-spray event to take residue samples. The results from these residue tests came back positive for several substances on vegetation, including propiconazole, metribuzin, and atrazine. Each of these substances are prohibited for use in organic systems. One sample showed propiconazole at 526 ppb (.526 ppm) and atrazine at 26.4 ppb. Another sample showed propiconazole at 374 ppb, atrazine at 51.8 ppb, and metribuzin at 126 ppb (.126ppm). A third sample showed propiconazole at 149 ppb, and atrazine at 26.1 ppb. We compared these residue levels to the EPA tolerance levels for these substances on grass, forage, as described at the Code of Federal Regulations Title 40, Chapter I, Subchapter E, Part 180. The EPA tolerance level on forage grass for propiconazole is .5 ppm. For metribuzin, the tolerance level on forage grass is 2 ppm. And, the tolerance level on forage grass for atrazine is 4 ppm.

When residue testing detects prohibited substances on agricultural products at levels that are greater than five percent of the EPA's tolerance for the specific residue detected, such agricultural products must not be sold, labeled, or represented as organically produced. All of the samples found propiconazole at above 5% of the EPA tolerance level, and, further, the 526ppb result is above the tolerance level even for conventional production. (We are required to report this violation to the EPA.) And, the 126 ppb result for the metribuzin is above 5% of the EPA tolerance level. (The atrazine results were all within organic tolerances as described at National Organic Standards section 205.671.) Note that application of a prohibited substance to land must result in that land being suspended from organic production for at least 36 months.

On 8/02/2017, MOSA inspected your farm and noted that vegetation on your property close to the road showed signs of over-spray. Additionally, it is our understanding that the vegetation samples were taken 300 feet north from the road on your property. Since samples were not taken beyond this point, test results do not suggest what would be a sufficient buffer to avoid unintended application of prohibited substances, if such spraying continues. However, buffer needs can be adjusted as site-specific situations

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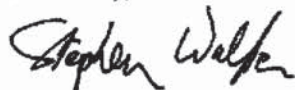
change. MOSA has a Verification of Adjoining Land Use form, which can help verify that adjoining land managers are working with organic operators to help prevent the unintended application of prohibited substances to organic land.

Please submit your plan for how you will avoid future contamination on organic crops.

MOSA must receive an adequate response to this noncompliance issue by the close of business on 11/16/2017, so we can ensure proper consideration for certification. An adequate response will typically include records or other written corrections to show current compliance, and will also explain any changes to ensure you will stay in compliance with the standards. Failure to submit an adequate written response by the stated deadline can lead to the issuance of a proposed suspension or revocation of your organic certification. Additionally, a failure to respond to certification requirements is subject to an additional fee, as described in the MOSA fee schedule.

Please contact the MOSA office if you have any questions.

Sincerely,



Stephen Walker
Operations Manager

cc: NOP Appeals Team NOPACAAverseActions@ams.usda.gov

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October 7, 2017

To Whom It May Concern,

Re: Aerial Spraying Incident

On July 12th, 2017 between 5:30pm and 6pm my husband and I were sitting in our dining room at (b) (6), (b) (7)(C) discussing our days while drinking cool beverages, as we had recently arrived home from work on this very warm day. We suddenly heard a very loud and low flying plane go over our house. Due to either the loudness and/or nearness the dishes in my china cabinet rattled we actually felt the house shake. Initially, I thought that it was going to crash, so we hurriedly got up and went out onto our deck to see what was going on.

We could not see anything from the deck, which is on the north side of our home, so we went around to the front on the south side as we could hear the sounds from plane was there now. Then we noted the plane was spraying the corn field south of our home, flying back and forth in east & west pattern. At this time we also saw our neighbors to the west, (b) (6) & (b) (6) were outside walking down their driveway towards the county road.

We started walking down our driveway also, but my husband, (b) (6) got a phone call and went back into the house to take his call where he could hear better. I continued out onto the road and met (b) (6) and (b) (6) about halfway between our properties. (b) (6) had pulled up his bright yellow "Do Not Spray" sign from the ground on the edge of their property and was holding it up trying to get the pilot's attention. The pilot was certainly close enough to see us there on the road. At times, his wings appeared to be only 25 - 40 feet away from the power lines on the south side of the road. He probably couldn't read the sign, at the speed he was flying, but he certainly would have seen that (b) (6) was holding a sign. (b) (6) took some video and photos of the plane on several of his close passes.

Especially after his closest passes, I could smell the foul odor of the spray and not knowing whether it was pesticides or herbicides, which I knew neither were good for humans nor pets, so I went back inside my home. We could still hear the sound of the plane's engine increasing and decreasing as he continued spraying for a time after I went inside.

(b) (6), (b) (7)(C)

eye witness report

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OCT 13 2017

Department of Agriculture
Div. of Agriculture

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10 October 2017

Dwight R. Pladsen, Inspector
U.S.D.T. F.A.A.
Flight Standards District Office
3501 5th Street
Rapid City, SD 57701

COPY

Dear Mr. Pladsen,

Enclosed is the final report from our investigation which shows the pilot violated FAA regulations on July 12th in Clay County, SD. We wish to reopen our complaint based on evidence presented in this report. The pilot of Jeff Mount of Crop Care Aerial Spraying violated FAA Title 14 of the CFR Section 91.119 of the General Operating and Flight Rules by flying too low within 500 feet of a person, residence, and structure and within 2000 feet of an assembly of persons.

My transcript is enclosed as delivered to the Clay County Commissioners Office on 10 October 2017 at 9:30am. It also includes photos and clips from video footage and a written eye witness account on the last page of the report.

Please respond back to us with your intended action and acknowledgement of our complaint.

We are requesting enforcement actions on the pilot. If the pilot had GPS in the plane, we would like to get that data from your office. We are planning to submit this report to our U.S. Legislators for their awareness of a huge problem in the joint jurisdiction area surrounding the City of Vermillion. In our opinion, Blaine Iverson should have his license revoked or suspended for endangerment of life and person.

This has caused so much emotional trauma for me personally, that whenever I hear a small plane flying near my farm, I cringe and cry. I hate small aircraft now.

Sincerely,

(b) (6)



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OCT 13 2017

U.S. DEPARTMENT OF TRANSPORTATION
FAA REGIONAL OFFICE

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10 October 2017

Mike Jaspers, Secretary of Agriculture
South Dakota Department of Agriculture
523 East Capitol Avenue
Joe Foss Building, 3rd Floor
Pierre, SD 57501

Dear Secretary Jaspers,

Thank you for your time today. The purpose of my letter is to bring awareness of an important agricultural issue to your direct attention. I have filed a complaint with the SD pesticide investigation office and three months later, the investigation hasn't started. J.D. Farley has been very cordial, but I have never heard of it taking 3 months to get back results from SDSU Ag Labs when we got our results back within 4 weeks.

The issue directly involves a list of two federal program violations:

- I was found in violation of CFR §202.201, §202.202, §205.240(a), §205.272(a), §205.671 as a result of a pilot violating CFR §91.119. While I got cited for violations and had to remove my land and crops from the federal organic program, the pilot is still flying all over the county without any ramifications.

Enclosed is my report based on my investigation as an experienced organic inspector and lead auditor in Clay County, SD. This involved aerial application of toxic chemicals within the joint jurisdiction area surrounding the City of Vermillion.

I am asking that your office help us by:

- Find the residue sample test results and complete the investigation as soon as possible.
- Suggest actions we can take at the federal, state, or local level to prevent this from reoccurring so we are not violating federal organic laws again and again and losing our crops and business.

We do have a USDA FSA microloan that we have to make payments on based on an organic farm plan. We built an innovative semi-portable poultry processing plant-in-a-box concept for organic poultry under federal inspection, but the plant sits empty now due to no fault of our own.

My transcript that is enclosed that was delivered to the Clay County Commissioners Meeting on 10 October 2017 at 9:30am.

Sincerely,
(b) (6)



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OCT 13 2017

Department of Agriculture
Div. of Agriculture

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**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF AGRICULTURAL SERVICES**

523 East Capitol Ave., Foss Building
Pierre, South Dakota 57501-3182
Phone (605) 773-4432 / Fax (605) 773-3481
<http://sdda.sd.gov/divisions/#agservices>

(b) (6)

July 13, 2017

Dear (b) (6)

Please find enclosed a pesticide damage complaint form. Please fill out all pertinent information regarding your complaint and retain this form until the State Ag Inspector contacts you.

Sincerely,

J.D. Farley, Ag Program Specialist
Office of Agronomy Services

cc: Tom Gere

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OCT 13 2017

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Farley, Joseph

From: (b) (6)
Sent: Wednesday, September 27, 2017 10:21 AM
To: Farley, Joseph
Subject: Re: [EXT] Question about decertified areas

Hello JD,

Thank you for getting back to me. Yes, I would like to request the inspector's report from Jeff Lounsbery. Please either email me a copy of the inspector's report or snail mail a physical copy to me so that I can provide this to my attorney.

Thank you.

Sincerely,

(b) (6)

On Wed, Sep 27, 2017 at 10:15 AM, Farley, Joseph <Joseph.Farley@state.sd.us> wrote:

(b) (6)

I will put this with the file. If you want a copy of the inspectors report I can give you that information if you request for it, either by email or mail. I have not received our results back from the lab at this time. Once I have those you will be getting a copy of them as well. If you need anything else, please let me know.

Thanks,

J.D. Farley

Ag Program Specialist

South Dakota Dept of Agriculture

Division of Agricultural Services

523 E. Capitol Ave., Foss Bldg

Pierre, SD 57501-3182

605.773.4432

From: (b) (6)
Sent: Wednesday, September 27, 2017 9:58 AM
To: Farley, Joseph
Cc: Lounsbery, Jeff
Subject: Fwd: [EXT] Question about decertified areas

Hello JD,

Please place this correspondence email from Erik in my file as part of the investigation. As you can see, we are citing the law and the EPA tolerances. My front yard not only exceeded the organic tolerance but it also slightly exceeded the EPA tolerance level for vegetation! This goes to support the fact he had the sprayer on when he did the first pass over our house just as my husband claimed he did. He did not shut them off fast enough during the hard right bank to miss the trees.

See the comment below from Erik Gunderson at MOSA. I have had no response from the crop applicator after having sent certified letters, text messages, and voice mail (b) (6) of Seeds Plus keeps asking for your report, and they are refusing to give us the name of the insurance company until they get that.

Sincerely,

(b) (6)

----- Forwarded message -----

From: Erik Gunderson <egundersen@mosaorganic.org>
Date: Tue, Sep 26, 2017 at 3:33 PM
Subject: Re: Question about decertified areas
To: (b) (6)

Hi (b) (6)

Good question. The parts of the National Organic Standards that relate to pesticide testing is here:

https://www.ecfr.gov/cgi-bin/text-idx?SID=ca303237dbb8fb6baa9b1e2f5c9f3428&mc=true&node=se7.3.205_1671&rgn=div8

According to this standard that we follow, if pesticides are found at 5% above the limit established by the EPA, then we must remove land from certification.

Here is the link to the EPA tolerance levels for specific substances:

https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=bd32aab1f2263d189c2ea7ae45c321e9&tpl=/ecfrbrowse/Title40/40cfr180_main_02.tpl

If you look into Propiconazole, it was found on vegetation at your farm at 374ppb (or 0.374ppm), 526ppb (or 0.526ppm) and 149ppb (or 0.149 ppm). The EPA established limit for this when found on grass is 0.5ppm. 5% of 0.5ppm is 0.025ppm. The test you submitted has levels above this, so we are required to remove the land from certification.

Please let me know if there are any other questions.

Thanks.

On Tue, Sep 26, 2017 at 2:35 PM, (b) (6) wrote:

Hello Erik,

I have a question that was asked my attorney that I can't answer.

This statement from the article cited below has raised quite a discussion on my case:

*"The damage can be more severe if drift contaminates an organic farm. Under U.S. Department of Agriculture certification rules, **contamination exceeding a defined level** requires a farmer to wait three years after an incident to plant an organic crop."*

<http://www.businessinsurance.com/article/00010101/NEWS06/302029995/Herbicide-risks-force-conventional-farmers-to-look-for-higher-coverage-limits>

What does it mean "contamination exceeding a defined level?" Were my test results above the defined level? Who sets these defined levels? Where are these defined levels posted?

I had an inspector for QAI tell me the defined limits are the safe limits set by the EPA. Is that true?

Sincerely,

(b) (6)

Erik Gundersen

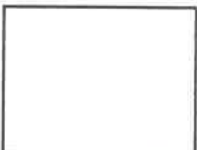
Certification Specialist

MOSA Certified Organic

PO Box 821 Viroqua, WI 54665

[608-637-2526](tel:608-637-2526)

www.mosaorganic.org



Farley, Joseph

From: Farley, Joseph
Sent: Friday, August 25, 2017 1:08 PM
To: (b) (6)
Subject: RE: [EXT] Lab Test Results - Angela Jackson case, Vermillion

(b) (6)

Thank you for the email. I will attach this email and all the documentation into the file for your case. We have not received any of our samples back from the lab at this time. Once I have those results back I will send them to you so you have record of them. Once we have all the lab results back and a report from the inspector we will start to review the case. Once we have an outcome of the case we will notify you as well. If you need anything else from me or have any questions, please let me know.

Thanks,

J.D. Farley
Ag Program Specialist
South Dakota Dept of Agriculture
Division of Agricultural Services
523 E. Capitol Ave., Foss Bldg
Pierre, SD 57501-3182
605.773.4432

From: (b) (6)
Sent: Friday, August 25, 2017 12:51 PM
To: Farley, Joseph
Subject: Fwd: [EXT] Lab Test Results (b) (6) case, Vermillion

Hello Joseph,

I don't know if you need the attached documents for my open case, but here they are if you need them:

- Decision letter of decertification of affected areas of land - see page 2 item #5 where MOSA took the affected areas of land out of organic status for 3 years. (~2.75 acres)
- Invoice for \$7434 for lab testing of our clothes and trees and grass as part of our organic inspection post-drift. Our clothes came back positive. Keep in mind that our clothes sat at our house for one week before we sent them in. If we had sent them off for testing the day after the incident, one would conclude that they would have tested much higher.
- Positive test results from SD Ag Labs testing.
- Sanford Health Lab Results for (b) (6) post spray.

The outcome of your investigation is very important to my case, so please keep me informed. I have also attached the lab report from the hospital showing high internal inflammation. My normal range is (b) (6) on C-Reactive Protein and after getting sprayed it was way above normal. I am still experiencing chronic

headaches. I did not shower right after the spray incident, so my acute poisoning became chronic and more sustained.

Thank you for continuing to look into this. I know the Dicamba drift issue is keeping your office busy, and I pray also for those affected farmers that they get financial assistance for their losses.

Sincerely,

(b) (6)